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July 2, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

By Electronic Filing

Re: Joint Petition of Accipiter Communications, Inc. and Qwest Corporation for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules, Petition for Waiver of Sec. 69.3(e)(11) of the Commission's Rules. CC Doc. No. 96-45

Ex Parte Notice

Dear Ms. Dortch:

On July 1, 2008, Accipiter Communications, Inc. ("Accipiter") submitted an ex parte notice in the above-referenced proceeding with regard to a response to a Staff request for information. Specifically, Staff requested information regarding the number of customers and residences not served by the CLEC (Cox) in the area that is the subject of the study area waiver request. Accipiter supplements its response by providing the attached map which indicates the general locations of the four residential and two business customers served by Accipiter (indicated by a circle with an "R" or a "B").

The map reflects the total area that is the subject of the study area waiver request, and also depicts that part of the area where Cox deployed facilities initially on an "exclusive" basis (the shaded area). As noted by Accipiter previously in this proceeding, Cox's actions to establish and maintain exclusivity have been the subject of ongoing investigations and legal proceedings. The customers served by Accipiter are not within the area where Cox deployed its services on an "exclusive" basis.

Accipiter appreciates and respects Staff's inquiry regarding existing customers and locations within the area that is the subject of this study area waiver request which supports the fact that the public interest will be served by the grant of the requested study area waiver.

Marlene H. Dortch, Secretary
Federal Communications Commission
Page 2

Accipiter respectfully notes, however, that it is obligated to offer service throughout the entire subject area, and to advertise the availability of universal services. This obligation arises from both the designation of Accipiter by the Arizona Corporation Commission ("ACC") as the incumbent local exchange carrier in the subject area and the ACC's designation of Accipiter as an eligible telecommunications carrier ("ETC").

Accordingly, Accipiter is required to provide service to any customer throughout the subject area including that area where Cox elected to attempt to provide "exclusive" services as well as in any other area that Cox may choose to serve. While Cox has the luxury as a competitive carrier of choosing where it will and will not serve, Accipiter does not.

While Accipiter stands ready and willing to fulfill this obligation consistent with its designation by the ACC, it cannot do so in the absence of the USF that was established to support the deployment and maintenance of incumbent rural telephone company networks providing carrier of last resort telecommunications services in the nation's high cost to serve areas. Unlike competitive eligible telecommunications carriers that may seek USF on the per line "identical support" basis that has been widely criticized and discredited by the FCC's Chairman and several Commissioners, Accipiter seeks the instant study area waiver in order to obtain USF support for the carrier of last resort network throughout the entire subject area.

As Accipiter has noted previously in this proceeding, its pending waiver request is consistent with both the Commission's objectives that foster the provision of universal service by a carrier of last resort throughout the nation's high cost to serve areas and with the established standards that the Commission applies to its consideration of study area requests. The public interest will be well served by grant of the requested study area which will ensure that both existing and future customers throughout the subject area have a carrier of last resort telecommunications network available.

Please contact me if there are any questions on this matter.

Sincerely yours,

s/David Cosson

David Cosson
Counsel to Accipiter Communications, Inc

Attachment

cc: Dana Shaffer
Jeremy Marcus
Amy Bender
Melissa Newman

2007 S. Vistancia Aerial - 11/1/2006 Flight Date

